

AMENDED IN SENATE APRIL 26, 2012

**SENATE BILL**

**No. 1489**

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**Introduced by Senator Harman**

February 24, 2012

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An act to amend Section ~~68152~~ *1417.1* of the ~~Government Penal~~ Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1489, as amended, Harman. Courts: destruction of ~~court records~~ *exhibits*.

Existing law authorizes the court clerk to ~~destroy court records~~ *distribute or dispose of exhibits that have been introduced or filed in any criminal action or proceeding after notice of destruction, if there is no request and order for transfer of the records, upon the expiration of specified time periods after final disposition of the case. Court records in capital felony cases are required to be retained permanently, unless the charge is disposed of by acquittal or a sentence less than death, in which circumstance the case is reclassified and different time periods for retention apply the final determination of the action or proceeding, as specified. In cases where the death penalty is imposed, existing law prohibits a court from ordering the destruction of an exhibit until 30 days after the date of execution of sentence.*

This bill would permit *a court to order* the destruction of ~~court records~~ *exhibits, in capital felony cases one year where the death penalty is imposed, 30 days after the execution of sentence or the death of the defendant while awaiting execution.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1417.1 of the Penal Code is amended to  
2     read:

3     1417.1. No order shall be made for the destruction of an exhibit  
4     prior to the final determination of the action or proceeding. For  
5     the purposes of this chapter, the date when a criminal action or  
6     proceeding becomes final is as follows:

7     (a) When no notice of appeal is filed, 30 days after the last day  
8     for filing that notice.

9     (b) When a notice of appeal is filed, 30 days after the date the  
10    clerk of the court receives the remittitur affirming the judgment.

11    (c) When an order for a rehearing, a new trial, or other  
12    proceeding is granted and the ordered proceedings have not been  
13    commenced within one year thereafter, one year after the date of  
14    that order.

15    (d) In cases where the death penalty is imposed, 30 days after  
16    the date of execution of sentence *or the death of the defendant*  
17    *while awaiting execution.*

18    SECTION 1. ~~Section 68152 of the Government Code is~~  
19    ~~amended to read:~~

20    ~~68152. The trial court clerk may destroy court records under~~  
21    ~~Section 68153 after notice of destruction, and if there is no request~~  
22    ~~and order for transfer of the records, except the comprehensive~~  
23    ~~historical and sample superior court records preserved for research~~  
24    ~~under the California Rules of Court, when the following times~~  
25    ~~have expired after final disposition of the case in the categories~~  
26    ~~listed:~~

27    ~~(a) Adoption: retain permanently.~~

28    ~~(b) Change of name: retain permanently.~~

29    ~~(c) Other civil actions and proceedings, as follows:~~

30    ~~(1) Except as otherwise specified: 10 years.~~

31    ~~(2) If a party appears by a guardian ad litem: 10 years after~~  
32    ~~termination of the court's jurisdiction.~~

33    ~~(3) Domestic violence: same period as duration of the restraining~~  
34    ~~or other orders and renewals, then retain the restraining or other~~  
35    ~~orders as a judgment; 60 days after expiration of the temporary~~  
36    ~~protective or temporary restraining order.~~

37    ~~(4) Eminent domain: retain permanently.~~

38    ~~(5) Family law, except as otherwise specified: 30 years.~~

1 ~~(6) Harassment: same period as duration of the injunction and~~  
2 ~~renewals, then retain the injunction as a judgment; 60 days after~~  
3 ~~expiration of the temporary restraining order.~~

4 ~~(7) Mental health (Lanterman Developmental Disabilities~~  
5 ~~Services Act and Lanterman-Petris-Short Act): 30 years.~~

6 ~~(8) Paternity: retain permanently.~~

7 ~~(9) Petition, except as otherwise specified: 10 years.~~

8 ~~(10) Real property other than unlawful detainer: retain~~  
9 ~~permanently if the action affects title or an interest in real property.~~

10 ~~(11) Small claims: 10 years.~~

11 ~~(12) Unlawful detainer: one year if judgment is for possession~~  
12 ~~of the premises; 10 years if judgment is for money.~~

13 ~~(d) Notwithstanding subdivision (c), any civil or small claims~~  
14 ~~case in the trial court:~~

15 ~~(1) Involuntarily dismissed by the court for delay in prosecution~~  
16 ~~or failure to comply with state or local rules: one year.~~

17 ~~(2) Voluntarily dismissed by a party without entry of judgment:~~  
18 ~~one year.~~

19 ~~Notation of the dismissal shall be made on the civil index of~~  
20 ~~cases or on a separate dismissal index.~~

21 ~~(e) Criminal:~~

22 ~~(1) Capital felony (murder with special circumstances where~~  
23 ~~the prosecution seeks the death penalty): one year after the~~  
24 ~~execution or death of the defendant while awaiting execution. If~~  
25 ~~the charge is disposed of by acquittal or a sentence less than death,~~  
26 ~~the case shall be reclassified.~~

27 ~~(2) Felony, except as otherwise specified: 75 years.~~

28 ~~(3) Felony, except capital felony, with court records from the~~  
29 ~~initial complaint through the preliminary hearing or plea and for~~  
30 ~~which the case file does not include final sentencing or other final~~  
31 ~~disposition of the case because the case was bound over to the~~  
32 ~~superior court: five years.~~

33 ~~(4) Misdemeanor, except as otherwise specified: five years.~~

34 ~~(5) Misdemeanor alleging a violation of the Vehicle Code,~~  
35 ~~except as otherwise specified: three years.~~

36 ~~(6) Misdemeanor alleging a violation of Section 23103, 23152,~~  
37 ~~or 23153 of the Vehicle Code: 10 years.~~

38 ~~(7) Misdemeanor alleging a violation of Section 14601, 14601.1,~~  
39 ~~20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five~~  
40 ~~years.~~

~~(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.~~

~~(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.~~

~~(10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.~~

~~(11) Infraction, except as otherwise specified: three years.~~

~~(12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.~~

~~(f) Habeas corpus: same period as period for retention of the records in the underlying case category.~~

~~(g) Juvenile:~~

~~(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.~~

~~(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.~~

~~(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed~~

1 upon court order when the subject of the record reaches the age  
2 of 38 under subdivision (d) of Section 781 of the Welfare and  
3 Institutions Code.

4 (4) ~~Traffic and some nontraffic misdemeanors and infractions~~  
5 ~~(Section 601 of the Welfare and Institutions Code): upon reaching~~  
6 ~~age 21 or five years after jurisdiction over the person has terminated~~  
7 ~~under subdivision (c) of Section 826 of the Welfare and Institutions~~  
8 ~~Code. May be microfilmed or photocopied.~~

9 (5) ~~Marijuana misdemeanor under subdivision (c) of Section~~  
10 ~~11357 of the Health and Safety Code in accordance with procedures~~  
11 ~~specified in subdivision (a) of Section 11361.5 of the Health and~~  
12 ~~Safety Code: upon reaching age 18 the records shall be destroyed.~~

13 (h) ~~Probate.~~

14 (1) ~~Conservatorship: 10 years after decree of termination.~~

15 (2) ~~Guardianship: 10 years after the age of 18.~~

16 (3) ~~Probate, including probated wills, except as otherwise~~  
17 ~~specified: retain permanently.~~

18 (i) ~~Court records of the appellate division of the superior court:~~  
19 ~~five years.~~

20 (j) ~~Other records.~~

21 (1) ~~Applications in forma pauperis: any time after the disposition~~  
22 ~~of the underlying case.~~

23 (2) ~~Arrest warrant: same period as period for retention of the~~  
24 ~~records in the underlying case category.~~

25 (3) ~~Bench warrant: same period as period for retention of the~~  
26 ~~records in the underlying case category.~~

27 (4) ~~Bond: three years after exoneration and release.~~

28 (5) ~~Coroner's inquest report: same period as period for retention~~  
29 ~~of the records in the underlying case category; if no case, then~~  
30 ~~permanent.~~

31 (6) ~~Court orders not associated with an underlying case, such~~  
32 ~~as orders for destruction of court records for telephone taps, or to~~  
33 ~~destroy drugs, and other miscellaneous court orders: three years.~~

34 (7) ~~Court reporter notes: 10 years after the notes have been taken~~  
35 ~~in criminal and juvenile proceedings and five years after the notes~~  
36 ~~have been taken in all other proceedings, except notes reporting~~  
37 ~~proceedings in capital felony cases (murder with special~~  
38 ~~circumstances where the prosecution seeks the death penalty and~~  
39 ~~the sentence is death), including notes reporting the preliminary~~

1 hearing, which shall be retained permanently, unless the Supreme  
2 Court on request of the court clerk authorizes the destruction.

3 (8) ~~Electronic recordings made as the official record of the oral~~  
4 ~~proceedings under the California Rules of Court: any time after~~  
5 ~~final disposition of the case in infraction and misdemeanor~~  
6 ~~proceedings, 10 years in all other criminal proceedings, and five~~  
7 ~~years in all other proceedings.~~

8 (9) ~~Electronic recordings not made as the official record of the~~  
9 ~~oral proceedings under the California Rules of Court: any time~~  
10 ~~either before or after final disposition of the case.~~

11 (10) ~~Index, except as otherwise specified: retain permanently.~~

12 (11) ~~Index for cases alleging traffic violations: same period as~~  
13 ~~period for retention of the records in the underlying case category.~~

14 (12) ~~Judgments within the jurisdiction of the superior court~~  
15 ~~other than in a limited civil case, misdemeanor case, or infraction~~  
16 ~~case: retain permanently.~~

17 (13) ~~Judgments in misdemeanor cases, infraction cases, and~~  
18 ~~limited civil cases: same period as period for retention of the~~  
19 ~~records in the underlying case category.~~

20 (14) ~~Minutes: same period as period for retention of the records~~  
21 ~~in the underlying case category.~~

22 (15) ~~Naturalization index: retain permanently.~~

23 (16) ~~Ninety-day evaluation (under Section 1203.03 of the Penal~~  
24 ~~Code): same period as period for retention of the records in the~~  
25 ~~underlying case category, or period for completion or termination~~  
26 ~~of probation, whichever is longer.~~

27 (17) ~~Register of actions or docket: same period as period for~~  
28 ~~retention of the records in the underlying case category, but in no~~  
29 ~~event less than 10 years for civil and small claims cases.~~

30 (18) ~~Search warrant: 10 years, except search warrants issued in~~  
31 ~~connection with a capital felony case defined in paragraph (7);~~  
32 ~~which shall be retained permanently.~~

33 (k) ~~Retention of the court records under this section shall be~~  
34 ~~extended as follows:~~

35 (1) ~~By order of the court on its own motion, or on application~~  
36 ~~of a party or an interested member of the public for good cause~~  
37 ~~shown and on those terms as are just. A fee shall not be charged~~  
38 ~~for making the application.~~

- 1     ~~(2) Upon application and order for renewal of the judgment to~~
- 2     ~~the extended time for enforcing the judgment.~~

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